

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Xiao Ying Liu v. United States Department of Justice

342 F. App'x 695 (2d Cir. 2009) · No. Nos. A097 160 508, A097 160 509 · Decided August 18, 2009

SUMMARY

The United States Court of Appeals for the Second Circuit denied Xiao Ying Liu and Shi Yu Li's petition for review of the Board of Immigration Appeals' denial of their untimely motion to reopen. The court held that the petitioners failed to demonstrate materially changed country conditions sufficient to excuse the filing deadline and vacated any stay of removal.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Jacobs; Leval; Newman
JURISDICTION	Federal
DECIDED	August 18, 2009
DOCKET	Nos. A097 160 508, A097 160 509
DISPOSITION	denied
PROCEDURAL POSTURE	Petition for review of the Board of Immigration Appeals' denial of a motion to reopen removal proceedings.
STANDARD OF REVIEW	The denial of a motion to reopen is reviewed for abuse of discretion. Agency factual findings concerning country conditions are reviewed under the substantial-evidence standard when the agency considers relevant country-conditions evidence.
PRECEDENTIAL VALUE	Nonprecedential summary order
PARTIES	Xiao Ying Liu, Shi Yu Li v. United States Department of Justice

TOPICS

removal proceedings

appellate procedure

judicial review of agency action

administrative law

standard of review

PRACTICE AREAS

Immigration

Administrative Law

Appellate Procedure

QUESTIONS PRESENTED

1. Whether the BIA abused its discretion by denying petitioners' untimely motion to reopen for failure to demonstrate materially changed country conditions sufficient to excuse the filing deadline.
2. Whether the BIA failed to consider petitioners' particularized evidence regarding changed country conditions.

HOLDINGS

1. A court reviews the agency's denial of a motion to reopen for abuse of discretion.
2. When the agency considers relevant evidence of country conditions in evaluating a motion to reopen, its factual findings are reviewed under the substantial-evidence standard.
3. The BIA did not err in denying petitioners' untimely motion to reopen because petitioners failed to demonstrate materially changed country conditions sufficient to excuse the filing limitation.

KEY QUOTATIONS

“We do not ourselves attempt to resolve conflicts in record evidence, a task largely within the discretion of the agency” (696)

FACTUAL BACKGROUND

Petitioners Xiao Ying Liu and Shi Yu Li are natives and citizens of the People's Republic of China. They filed an untimely motion to reopen and argued that changed country conditions, including evidence relating to China's family-planning policy, excused the filing deadline. The BIA concluded that petitioners had not demonstrated materially changed country conditions and had not shown that it ignored their particularized evidence.

PROCEDURAL HISTORY

The BIA denied petitioners' motion to reopen on August 31, 2007. Petitioners sought review in the Second Circuit, arguing that changed country conditions excused the untimely filing and that the BIA failed to consider particularized evidence. The court denied the petition for review, vacated any previously granted stay of removal, dismissed any pending stay motion as moot, and denied oral argument.

DISPOSITION

denied

CASES CITED

- Ali v. Gonzales, 448 F.3d 515, 517 (2d Cir. 2006)
- Jian Hui Shao v. Mukasey, 546 F.3d 138, 169-72 (2d Cir. 2008)
- Wei Guang Wang v. BIA, 437 F.3d 270, 275 (2d Cir. 2006)
- Xiao Ji Chen v. U.S. Department of Justice, 471 F.3d 315, 337 n. 17 (2d Cir. 2006)
- Jian Hui Shao v. Mukasey, 546 F.3d 138, 172 (2d Cir. 2008)

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